

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RUBEN BARNETT

COMPLAINANT

v.

SOUTH ANDERSON WATER DISTRICT

DEFENDANT

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) CASE NO. 95-397
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O R D E R

On September 16, 1995, Ruben Barnett filed a complaint against South Anderson Water District ("South Anderson") concerning South Anderson's reimbursement policy as regards a water line extension for which he paid. South Anderson was directed by Order of the Commission to satisfy or answer the complaint. South Anderson filed its answer on September 25, 1995. On November 3, 1995, the parties were ordered to file additional information with the Commission. Both parties filed timely responses. On January 5, 1996, the Commission by Order sought clarification of those responses. The parties again responded accordingly. On March 6, 1996, the Commission issued a final Order in this proceeding which directed South Anderson to apply 807 KAR 5:066, Section 11(3), to the line extension in question, and to reimburse Mr. Barnett accordingly thereunder. South Anderson was also directed to take appropriate action to conform the provisions of its tariff concerning extensions to the conclusions of the Order.

On March 15, 1996, Mr. Barnett filed a motion requesting that the Commission reconsider, alter, amend, or vacate its Order of March 6, 1996. The Commission will treat this as a motion for rehearing pursuant to KRS 278.400. As such, the motion was timely filed. Mr. Barnett requested a hearing due to "numerous factual disputes." According to Mr. Barnett, he is entitled to relief based upon "the misrepresentations by the South Anderson Water District and therefore the South Anderson Water District should be estopped from setting forth any other reimbursement method." Mr. Barnett continues to argue over which of two reimbursement methods regarding water line extensions should be applied to his extension, claiming that the method adopted effective January 1, 1994 superseded any other reimbursement methods South Anderson may have had.

As stated in the final Order, Mr. Barnett is correct in his assertion that South Anderson's reimbursement method which went into effect January 1, 1994, which was essentially 807 KAR 5:066, Section 11(2)(b)(2), superseded the provision already contained in South Anderson's tariff regarding line extension reimbursements, which followed 807 KAR 5:066, Section 11(2)(b)(1). A utility cannot have both alternatives permitted by 807 KAR 5:066, Section 11(2)(b), filed in its tariff, but must chose one or the other.

However, as the Commission's Order of March 6, 1996 made apparent, neither 807 KAR 5:066, Section 11(2)(b)(1), nor 807 KAR 5:066, Section 11(2)(b)(2), were applicable to Mr. Barnett's situation. Both parties were in error. As the extension in

question was to a real estate subdivision,¹ 807 KAR 5:066, Section 11(3), is clearly the applicable regulation. A similar provision, effective March 21, 1991, is contained in South Anderson's tariff and has not been superseded.

While Mr. Barnett may have numerous factual disputes with South Anderson, they are not relevant here. This proceeding hinged on a question of law, specifically which regulation and tariff provision should be applied. No issues of material fact existed, so an evidentiary hearing was not required. Cumberland Reclamation Company v. Secretary, United States Department of the Interior, 925 F.2d 164 (6th Cir. 1991). After a thorough review of the record, the Commission determined that the key fact relevant to this proceeding was whether the extension in question was to a proposed real estate subdivision. As both parties admitted that it was, the Commission's task was merely to determine the applicable law. Under these circumstances, and familiar principles of law, Mr. Barnett had a fair hearing which satisfied the requirements of due

¹ According to South Anderson's January 17, 1996 response to the Commission's January 5, 1996 Order, the line extension in question was installed to serve "a proposed real estate subdivision." South Anderson stated that Mr. Barnett divided his property on Rice Road into eight tracts, and has in fact already sold three of those tracts to three different parties. South Anderson enclosed a copy of the plan of subdivision certified by Mr. Barnett on January 13, 1995, as well as copies of the Deeds of Conveyance for the three tracts sold by Mr. Barnett. Mr. Barnett, in his January 18, 1996 response to the Commission's January 5, 1996 Order, also stated that the line was extended to eight lots on Rice Road that he had subdivided.

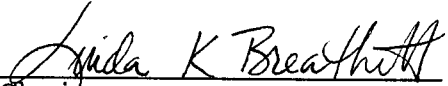
process. Kentucky Bar Association v. Ricketts, Ky., 599 S.W.2d 454 (1980).

As the question before the Commission in this proceeding was a question of law rather than fact, rehearing should be denied. There is nothing to be gained by further discussion of the factual disputes between Mr. Barnett and South Anderson. 807 KAR 5:066, Section 11(3), was determined by the Commission to be the applicable regulation, and the parties should proceed as directed in the Order of March 6, 1996.

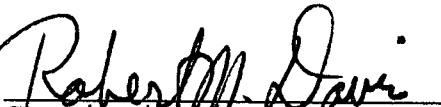
IT IS THEREFORE ORDERED that Mr. Barnett's motion to reconsider, alter, amend, or vacate the Commission's final Order of March 6, 1996 is denied.

Done at Frankfort, Kentucky, this 28th day of March, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director